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SENATE

REPORT
102-11

CORRECTING AN ERROR IN THE SOLAR, WIND, WASTE, AND GEOTHERMAL POWER PRODUCTION INCENTIVES ACT OF 1990

FEBRUARY 7 (legislative day, FEBRUARY 6), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 258]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 258) to correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 258 is to correct a technical error contained in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Public Law 101-575).

BACKGROUND AND NEED

In 1978 Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA). PURPA created a special class of electric generating projects, known as Qualifying Facilities (QFs), that receive various advantages. The most important of these advantages are: (1) exemption from the Federal Power Act, the Public Utility Holding Company Act of 1935, and state utility regulation; and (2) a requirement (subject to certain conditions) that utilities purchase power offered by QFs at each utility's "avoided cost", the cost that a utility avoids by not generating the power itself or purchasing it elsewhere.

QFs are of two types: qualifying cogeneration facilities and qualifying small power production facilities. Qualifying cogeneration fa-

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cilities may burn any fuel, but must sequentially produce electricity and useful thermal energy, generally in the form of steam. Qualifying small power production facilities are required under PURPA to produce electricity using biomass, waste, renewable resources, geothermal resources, or any combination thereof as a primary energy source. Whereas there is no limitation on the power production capacity of qualifying cogeneration facilities, PURPA places restrictions on the size of qualifying small power production facilities.

Prior to its amendment in the 101st Congress, PURPA limited the size of qualifying small power production facilities to no more than 80 megawatts. Furthermore, PURPA generally restricted the availability of federal and state regulatory exemptions to qualifying small power production facilities that do not exceed 30 megawatts.[1]

In the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Congress sought to remove the size limitations under PURPA for all qualifying small power production facilities that use solar, geothermal, wind, or waste as their primary energy source, subject only to cerain time requirements concerning development. However, because of a technical drafting error, size limitations were only removed for qualifying small power production facilities that are larger than 80 megawatts. Small power production facilities that are 80 megawatts or less were left subject to varying restrictions on the availability of regulatory exemptions. S. 258 would correct this oversight.

Legislative History

At the business meeting on January 29, 1991, the Senate Committee on Energy and Natural Resources ordered S. 258 favorably reported. S. 258 was introduced by Senator Johnston on January 23, 1991.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on January 29, 1991, by a majority vote of a quorum present, recommends that the Senate pass S. 258.

The rollcall vote on reporting the measure was 15 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers *	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman *	
Mr. Wirth	

[1] Two exceptions were provided. Qualifying small power production facilities that use geothermal resources as a primary energy source were allowed to receive state and federal regulatory exemptions up to the 80 megawatt ceiling. In addition, PURPA provided that qualifying small power production facilities using biomass as a primary energy source may receive exemption from state utility regulation and the Public Utility Holding Company Act of 1935, though not the Federal Power Act, up to the 80 megawatt ceiling.

Mr. Conrad
Mr. Akaka
Mr. Hatfield
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Burns
Mr. Garn *

* Indicates voted by proxy.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

Congressional Budget Office,
Washington, DC, February 6, 1991.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 258, a bill to correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, as ordered reported by the Senate Committee on Energy and Natural Resources on January 29, 1991. CBO estimates that enacting this bill would result in no additional cost to the federal government. Because the bill would not affect direct spending, it would have no effect under the pay-as-you-go procedures established by section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Public Law 101-575, enacted in 1990, removed certain power capacity limitations on solar, wind, waste, and geothermal power facilities. S. 258 would ensure that the favorable regulatory treatment applicable to such facilities would apply to small power plants as well as large-capacity plants.

Enacting S. 258 would have no impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Fontaine, who can be reached on 226-2860.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 258. S. 258 is a regulatory measure. However, it would not impose significant new Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering S. 258. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 258, as reported.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 258, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

The Act of June 10, 1920, Chapter 285

Part I

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission * * *

* * * * * * *

SEC. 3. The words defined in this section shall have the following meanings for purpose of this Act, to wit:

* * * * * * *

(17)(A) "small power production facility" means * * *

* * * * * * *

(E) "eligible solar, wind, waste or geothermal facility" means a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources [and which would otherwise not qualify as a small power production facility because of the power production capacity limitation contained in subparagraph (A)(ii)]; but only if—

(i) either of the following is submitted to the Commission not later than December 31, 1992:

(I) an application for certification of the facility as a qualifying small power production facility; or

(II) notice that the facility meets the requirements for qualification; and

(ii) construction of such facility commences not later than December 31, 1997 or, if not, reasonable diligence is exercised towards the completion of such facility taking into account all factors relevant to construction of the facility.

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